

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RACHEL BOHNENKAMP.

Plaintiff

VS.

JAMES WUSTERBARTH,  
et al.,

Case No. 1:19-cv-00115-RAL

RICHARD A. LANZILLO  
UNITED STATES MAGISTRATE JUDGE

## ORDER SCHEDULING ORAL ARGUMENT AND SUPPLEMENTAL BRIEFING

Presently pending before the Court are motions to dismiss filed by Defendant United States of America (ECF No. 39) and Defendant James Wusterbarth (ECF No. 47). In reviewing the Parties’ submissions regarding the United States’ motion, the Court has identified an issue of law that the parties have not adequately addressed in their briefs—specifically; assuming Wusterbarth acted within the scope of his employment, do aspects of Plaintiff’s intentional infliction of emotional distress and invasion of privacy-intrusion upon seclusion claims fall outside of the Federal Tort Claims Act’s “intentional tort” exception, 28 U.S.C. § 2680(h)? *Compare, McCluskey v. United States*, 2010 WL 4024717, at \*8 (W.D. Pa. Oct. 12, 2010), *with Ruddy v. United States*, 2011 WL 5834953, at \*4 (M.D. Pa. Nov. 21, 2011) and *Jense v. Runyon*, 990 F. Supp. 1320, 1330 (D. Utah 1998).

The Parties are directed to file supplemental briefs on this issue on or before **Wednesday, April 14, 2021**. Supplemental briefs shall not exceed ten (10) pages in length. Further, the Court will hear oral argument on the motions to dismiss on **Friday, April 16, 2021, at 11:00 AM**. Oral argument will be conducted by video conference and instructions for accessing the Court's video conferencing application will be emailed to Counsel prior to the hearing.

In addition, a telephonic status conference will be scheduled for **Tuesday, April 6, 2021, beginning at 10:00 AM.** At that time, the Court will provide further clarification of its concerns and questions for Counsel. Pending receipt of the supplemental briefing and further argument, the Court will terminate the pending motions to dismiss, to be reactivated following oral argument.

So ordered this 31<sup>st</sup> day of March 2021.



RICHARD A. LANZILLO  
United States Magistrate Judge